

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ERNEST R. PARKER,
Also known as Earnest Parker-Bey,

Case No. 16-cv-939-pp

Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

**ORDER GRANTING RESPONDENT'S UNOPPOSED MOTION TO STAY
BRIEFING ON ISSUE OF WHETHER THE JOHNSON DECISION APPLIES ON
THE COLLATERAL ATTACK OF A CAREER OFFENDER DESIGNATION
(Dkt. No. 6), AND SETTING A BRIEFING SCHEDULE AS TO ANY OTHER
ISSUES**

The petitioner's Section 2255 motion involves a collateral challenge to his classification as a career offender under §4B1.1 of the United States Sentencing Guidelines. Dkt. No. 1-1. Specifically, he argues that his 1983 California robbery conviction no longer qualifies as a predicate for career offender purposes, after the Supreme Court's decision in Johnson v. United States, 135 S. Ct. 2551 (2015). Id. Federal Defender Services of Wisconsin has made an appearance on the petitioner's behalf, indicating that it intends to file an amended petition. Dkt. No. 2. The government has proposed that the court stay all further pleadings and briefing until the United States Supreme Court has decided Beckles v. United States, Supreme Court Dkt. No. 15-8544, because that decision will resolve the question of whether Johnson applies retroactively to collateral attacks such as this one. Dkt. No. 6. The petitioner's counsel has

no objection to staying briefing on the retroactivity issue, but asks the court to set a briefing schedule on the other issues in the case (such as the question of whether robbery under the California statute under which the petitioner was convicted constitutes a crime of violence for the purposes of the career offender enhancement). Dkt. No. 7. Counsel suggests that if the court goes ahead and sets a briefing schedule now, all relevant issues should be fully briefed by the time the Supreme Court issues its decision in Beckles. Id.

The court **ORDERS** the following:

The court **GRANTS** the government's motion, and **STAYS** any further pleadings or briefing on the issue of whether the Supreme Court's decision in Johnson applies retroactively on a collateral attack of a career offender enhancement based on the residual clause of U.S.S.G. §4B1.1. Dkt. No. 6.

The court **ORDERS** that the petitioner shall file his amended petition no later than the end of the day on **Friday, February 3, 2017**.

The court **ORDERS** that the respondent shall file its response to the petition (on any issues *other than* the question presented in Beckles) no later than the end of the day on **Monday, March 20, 2017**.

The court **ORDERS** that the petitioner shall file a reply brief in support of the petition no later than the end of the day on **Friday, May 5, 2017**.

Dated in Milwaukee, Wisconsin this 20th day of December, 2016.

BY THE COURT:



HON. PAMELA PEPPER
United States District Judge